

BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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IN THE MATTER OF:

ORDER NO. 2011-054-DAO-WS

Governing Board Concurrence
with the Granting of Temporary
Variances from Water Shortage
Restrictions Imposed by Water
Shortage Order No: 2011-039-
DAO-WS

**FINAL ORDER OF GOVERNING BOARD CONCURRENCE WITH ACTION ON
WATER SHORTAGE VARIANCE APPLICATIONS**

This cause having come before the Governing Board of the South Florida Water Management District ("District"), at its meeting of April 14, 2011 for entry of a Final Order, and upon staff's recommendation, and being fully informed otherwise, the Governing Board issues this Order of Concurrence containing the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Since November 11, 2010, the District has entered a series of Water Shortage Orders due to serious drought conditions throughout the District.
2. On April 11, 2011, the Executive Director of the District designated her signature authority to Thomas Olliff, Assistant Executive Director, Deena Reppen, Deputy Executive Director, Regulatory and Public Affairs, and Terrie Bates, Assistant Deputy Executive Director, Regulatory and Public Affairs, to take action on all applications for variances from present and future Water Shortage Orders throughout the duration of the 2011 Drought, pursuant to the authority in Rule 40E-21.275, Florida

Administrative Code ("Fla. Admin. Code"). A copy of the subject designation from the Executive Director is attached hereto and incorporated herein by reference as Exhibit A.

3. Members of the Water Use and Water Supply Regulation Division staff reviewed applications for variance from Water Shortage Order No. 2011-039-DAO-WS. Those applications that were determined to be properly submitted pursuant to the District rules and the facts alleged therein, entitled the applicants to the requested variances. A list of the Temporary Variances granted, along with the Applicants' names, and the specific authorizations granted is attached hereto and incorporated herein by reference as Exhibit B.

4. Pursuant to subsection 373.083(5), Florida Statutes, and the District Policies and Procedures, Section 101.22(b), the District's Governing Board delegated to the Executive Director and General Counsel, authority to execute final orders following Governing Board action.

CONCLUSIONS OF LAW

5. Pursuant to Rule 40E-21.275, Fla. Admin. Code, the Executive Director, or their designee, has authority to grant applications for variances from water use restrictions.

6. Rule 40E-21.275(2), Fla. Admin. Code, sets forth the criteria for issuance of a variance.

7. Under Rule 40E-21.275(5)(b), Fla. Admin. Code, temporary variances granted by the Executive Director, or their designee, must be presented to the Governing Board at its next regularly scheduled meeting for concurrence, rejection, or modification.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED:

8. The Governing Board hereby concurs with the action taken by the Executive Director, or their designee, in granting Temporary Variances from Water Shortage Restrictions affecting the areas designated within Water Shortage Order No. 2011-039-DAO-WS.

9. Temporary Variances, listed on the attached Exhibit B, shall expire upon completion of stated term, or, if the Temporary Variance is for the duration of the water shortage, upon a declaration by the Governing Board that a water shortage in the affected area no longer exists and thereby rescinds the Water Shortage Order or when a more restrictive water shortage declaration is made in the affected areas.

10. A Notice of Rights is attached as Exhibit C.

DONE AND ORDERED in West Palm Beach, Florida, on this 14th day of April, 2011.



ATTEST:

Jackie McGarity
District Clerk/Assistant Secretary
Date: April 18, 2011

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board

Sheryl G. Wood
SHERYL G. WOOD
General Counsel

Legal Form Approved:

Jennifer Bokankowitz
Jennifer Bokankowitz

MEMORANDUM

TO: Thomas Olliff, Assistant Executive Director
Deena Reppen, Deputy Executive Director, Regulatory & Public Affairs
Terrie Bates, Asst. Deputy Executive Director, Regulatory & Public Affairs

FROM: Carol Ann Wehle, Executive Director


DATE: April 11, 2011

SUBJECT: **Designation from The Executive Director to the Assistant Executive Director, the Deputy Executive Director, Regulatory & Public Affairs, and the Assistant Deputy Executive Director, Regulatory and Public Affairs, Regarding Applications for Variances from Present and Future Water Shortage Orders throughout the duration of the 2011 Drought.**

I am hereby designating the Assistant Executive Director, the Deputy Executive Director, Regulatory & Public Affairs, and the Assistant Deputy Executive Director, Regulatory and Public Affairs, with the authority to act on applications for variances from water shortage restrictions pursuant to Rule 40E-21.275, Florida Administrative Code (Fla. Admin. Code).

Until further notice, or until current or future Water Shortage Orders, regarding the 2011 Drought are rescinded, the Assistant Executive Director, the Deputy Executive Director, Regulatory & Public Affairs, and the Assistant Deputy Executive Director, Regulatory and Public Affairs, shall have the authority to take action on all temporary authorizations of withdrawal facility operation from current and future Water Shortage Orders, throughout the duration of the 2011 Drought, which are filed pursuant to Rule 40E-21.275, Fla. Admin. Code. Such action is subject to concurrence, modification, or denial by the Governing Board at its next regular monthly meeting.

This designation is given to the Assistant Executive Director, the Deputy Executive Director, Regulatory & Public Affairs, and the Assistant Deputy Executive Director, Regulatory and Public Affairs, for the express purpose of providing a quick turnaround time for processing applications for variances from current and future Water Shortage Orders throughout the duration of the 2011 Drought.

BY: 
CAROL ANN WEHLE
Executive Director
South Florida Water Management District

CAW/kar

C:	Peter Kwiatkowski	Ximena Pernet	Jayne Bergstrom	Yvette Bonilla
	Phil Flood	Cynthia Gefvert	Thomas Genovese	Ed Hernandez
	Pam Mac'kie	Jackie McGorty	Gary Ritter	Jesus Rodriguez
	Kim Shugar	Susan Sylvester	Clarence Tears	Ricardo Valera
	Reagan Walker	Elbert Waters	Cecelia Weaver	Benita Whalen
	Ed Yaun	Jennifer Bokankowitz	Sarah Nall	Elizabeth Ross

EXHIBIT A

WATER SHORTAGE VARIANCES

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1. PERMITTEE: THE OLD COLLIER GOLF CLUB, INC. PERMIT NO.: 11-01758-W
PROJECT: OLD COLLIER GOLF CLUB

COLLIER COUNTY

FINAL ORDER CONCURRING WITH THE GRANTING OF A TEMPORARY VARIANCE FROM WATER SHORTAGE RESTRICTIONS IMPOSED BY ORDER NO. 2011-039-DAO-WS, AFFECTING GOLF COURSE AND LANDSCAPE IRRIGATION USERS WITHIN THE BOUNDARIES OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

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2. PERMITTEE: JUPITER ISLAND CLUB, INC. PERMIT NO.: 43-00273-W
PROJECT: JUPITER ISLAND

MARTIN COUNTY

FINAL ORDER CONCURRING WITH THE GRANTING OF A TEMPORARY VARIANCE FROM WATER SHORTAGE RESTRICTIONS IMPOSED BY ORDER NO. 2011-039-DAO-WS, AFFECTING GOLF COURSE AND LANDSCAPE IRRIGATION USERS WITHIN THE BOUNDARIES OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

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3. PERMITTEE: LOST TREE CLUB, INC PERMIT NO.: 50-00421-W
PROJECT: LOST TREE CLUB

PALM BEACH COUNTY

FINAL ORDER CONCURRING WITH THE GRANTING OF A TEMPORARY VARIANCE FROM WATER SHORTAGE RESTRICTIONS IMPOSED BY ORDER NO. 2011-039-DAO-WS, AFFECTING GOLF COURSE AND LANDSCAPE IRRIGATION USERS WITHIN THE BOUNDARIES OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

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4. PERMITTEE: THE BREAKERS PALM BEACH, INC. PERMIT NO.: 50-04366-W
PROJECT: THE BREAKERS PALM BEACH

PALM BEACH COUNTY

FINAL ORDER CONCURRING WITH THE GRANTING OF A TEMPORARY VARIANCE FROM WATER SHORTAGE RESTRICTIONS IMPOSED BY ORDER NO. 2011-039-DAO-WS, AFFECTING GOLF COURSE AND LANDSCAPE IRRIGATION USERS WITHIN THE BOUNDARIES OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

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5. PERMITTEE: SEMINOLE GOLF CLUB PERMIT NO.: 50-00349-W
PROJECT: SEMINOLE GOLF CLUB

PALM BEACH COUNTY

FINAL ORDER CONCURRING WITH THE GRANTING OF A TEMPORARY VARIANCE FROM WATER SHORTAGE RESTRICTIONS IMPOSED BY ORDER NO. 2011-039-DAO-WS, AFFECTING GOLF COURSE AND LANDSCAPE IRRIGATION USERS WITHIN THE BOUNDARIES OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

WATER SHORTAGE VARIANCES

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6. PERMITTEE: THE EVERGLADES CLUB, INC. PERMIT NO.: 50-03413-W
PROJECT: THE EVERGLADES CLUB

PALM BEACH COUNTY

FINAL ORDER CONCURRING WITH THE GRANTING OF A TEMPORARY VARIANCE FROM WATER SHORTAGE RESTRICTIONS IMPOSED BY ORDER NO. 2011-039-DAO-WS, AFFECTING GOLF COURSE AND LANDSCAPE IRRIGATION USERS WITHIN THE BOUNDARIES OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

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7. PERMITTEE: PALM BEACH COUNTRY CLUB PERMIT NO.: 50-03835-W
PROJECT: PALM BEACH COUNTRY CLUB

PALM BEACH COUNTY

FINAL ORDER CONCURRING WITH THE GRANTING OF A TEMPORARY VARIANCE FROM WATER SHORTAGE RESTRICTIONS IMPOSED BY ORDER NO. 2011-039-DAO-WS, AFFECTING GOLF COURSE AND LANDSCAPE IRRIGATION USERS WITHIN THE BOUNDARIES OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

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8. PERMITTEE: FLORIDA DEPARTMENT OF PUBLIC WORKS PERMIT NO.: 50-05487-W
PROJECT: SR 80 MEDIAN ENHANCEMENT

PALM BEACH COUNTY

FINAL ORDER CONCURRING WITH THE GRANTING OF A TEMPORARY VARIANCE FROM WATER SHORTAGE RESTRICTIONS IMPOSED BY ORDER NO. 2011-039-DAO-WS, AFFECTING GOLF COURSE AND LANDSCAPE IRRIGATION USERS WITHIN THE BOUNDARIES OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

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9. PERMITTEE: CHRIST FELLOWSHIP CHURCH PERMIT NO.: 50-04723-W
PROJECT: CHRIST FELLOWSHIP CHURCH

PALM BEACH COUNTY

FINAL ORDER CONCURRING WITH THE GRANTING OF A TEMPORARY VARIANCE FROM WATER SHORTAGE RESTRICTIONS IMPOSED BY ORDER NO. 2011-039-DAO-WS, AFFECTING GOLF COURSE AND LANDSCAPE IRRIGATION USERS WITHIN THE BOUNDARIES OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

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10. PERMITTEE: FLORIDA DEPARTMENT OF PUBLIC WORKS PERMIT NO.: 50-05613-W
PROJECT: SR 80 (SOUTHERN BOULEVARD)

PALM BEACH COUNTY

FINAL ORDER CONCURRING WITH THE GRANTING OF A TEMPORARY VARIANCE FROM WATER SHORTAGE RESTRICTIONS IMPOSED BY ORDER NO. 2011-039-DAO-WS, AFFECTING GOLF COURSE AND LANDSCAPE IRRIGATION USERS WITHIN THE BOUNDARIES OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a District decision which does or may determine their substantial interests shall file a petition for hearing with the District Clerk within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: 1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or 2) within 14 days of service of an Administrative Order pursuant to Subsection 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of either written notice through mail, or electronic mail, or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

Filing Instructions

The Petition must be filed with the Office of the District Clerk of the SFWMD. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** Any person wishing to receive a clerked copy with the date and time stamped must provide an additional copy. A petition for administrative hearing is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Any document received by the office of the SFWMD Clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the SFWMD Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must be delivered to the Office of the SFWMD Clerk. **Delivery of a petition to the SFWMD's security desk does not constitute filing. To ensure proper filing, it will be necessary to request the SFWMD's security officer to contact the Clerk's office.** An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by facsimile must be transmitted to the SFWMD Clerk's Office at (561) 682-6010. Pursuant to Subsections 28-106.104(7), (8) and (9), Fla. Admin. Code, a party who files a document by facsimile represents that the original physically signed document will be retained by that party for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in that cause. Any party who elects to file any document by facsimile shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result. The filing date for a document filed by facsimile shall be the date the SFWMD Clerk receives the complete document.

Initiation of an Administrative Hearing

Pursuant to Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 and 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, District file number or any other SFWMD identification number, if known.
2. The name, address and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

If the District takes action with substantially different impacts on water resources from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law.

Mediation

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Sections 120.60(3) and 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.